



# PUBLIC NOTICE

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**FCC 07-12**

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## **FCC CONDITIONALLY GRANTS QWEST FORBEARANCE RELIEF FROM DOMINANT CARRIER REGULATION OF IN-REGION, INTERSTATE, INTERLATA TELECOMMUNICATIONS SERVICES PROVIDED ON AN INTEGRATED BASIS**

**WC Docket No. 05-333**

The Federal Communications Commission (Commission) today conditionally granted in part and denied in part a petition for forbearance filed by Qwest Communications International, Inc. (Qwest) seeking relief from statutory and regulatory obligations that apply to Qwest's provision, on an integrated basis,<sup>1</sup> of in-region, interstate, interLATA telecommunications services. This Public Notice summarizes the terms of the Commission's Order, which will be released subsequently.<sup>2</sup>

In order to avoid dominant carrier regulation of its in-region, interstate, interLATA services, Qwest currently must provide these services through separate affiliates that meet the requirements of section 272 of the Communications Act and the Commission's implementing rules. The Commission's Order conditionally allows Qwest to provide these services through its BOC or through other Qwest affiliates that do not comply with section 272 or the Commission's rules implementing that section, without those services becoming subject to dominant carrier regulation.<sup>3</sup>

The Commission's market analysis reveals that Qwest generally lacks classical market power in providing in-region, interstate, interLATA telecommunications services – *i.e.*, Qwest lacks the ability unilaterally to raise and maintain retail prices of in-region, interstate, interLATA telecommunications services above competitive levels. The Commission finds, however, that Qwest has failed to present persuasive evidence that it no longer possesses exclusionary market power – *i.e.*, market power over bottleneck inputs within its region – and the Commission assumes, for purposes of this proceeding, that Qwest continues to have the ability to raise rivals' costs by reason of its control over local bottleneck access facilities. The Commission concludes that existing safeguards, along with the conditions it imposes in connection with its grant of forbearance, are adequate to prevent Qwest from exercising this exclusionary market power. For these reasons, and because it finds that the burden of compliance with dominant carrier regulation outweighs the benefits, the Commission forbears from applying dominant carrier regulation to Qwest's provision of in-region, interstate, interLATA telecommunications services on an integrated basis.

### **Specific Relief**

<sup>1</sup> For the sake of convenience, we use the phrase "on an integrated basis" to refer to service provided through Qwest's Bell Operating Company (BOC) or through other Qwest affiliates that are not compliant with section 272 or the Commission's rules implementing that section. See 47 U.S.C. § 272.

<sup>2</sup> The Commission's Order, FCC 07-13, was adopted today and will be released on a later date.

<sup>3</sup> The relief we grant today does not apply to Qwest's interstate switched and special access services. In addition, we do not forbear from the requirements contained in section 272(e) of the Act.

The Order conditionally grants Qwest certain forbearance relief and otherwise denies Qwest's petition for forbearance.

- 1. Tariff Filings.** Qwest will not be required to, and is in fact barred from, filing tariffs for in-region, interstate, interLATA telecommunications services pursuant to the tariffing requirements for dominant carriers in sections 61.31-.38 of our rules, and from annual price cap filing requirements in section 61.43 of our rules. The Commission further forbears from section 203 of the Act to the limited extent necessary to relieve Qwest of its section 61.31-.38 obligations with respect to in-region, interstate, interLATA services. The Commission does not forbear from the application of the other dominant carrier price cap, rate of return, and tariffing rules identified by Qwest (*i.e.*, rules 61.41, 61.45, 61.46-.49, 61.58-.59, 65.1(b)(1), 65.1(b)(3), and 65.600) because the forbearance from sections 61.31-.38 of the rules obviates the need for Qwest to file tariffs for any in-region, interstate, interLATA telecommunications services it chooses to provide on an integrated basis, and because the Commission treats, and will continue to treat, the costs and revenues associated with Qwest's provision of in-region, interstate, interLATA telecommunications services as nonregulated for accounting purposes.<sup>4</sup>
- 2. Interexchange Basket.** Qwest will not be required to establish an "interexchange basket" pursuant to section 61.42(d)(4) of the rules, to the extent that rule 61.42(d)(4) would require the establishment of an interexchange basket for the provision of in-region, interstate, interLATA telecommunications services it chooses to provide on an integrated basis. We otherwise do not forbear from the application of section 61.42(d)(4).
- 3. International Services.** The Commission forbears from applying the tariffing requirements for dominant international carriers in section 61.28 of the rules to Qwest to the extent that, and only to the extent that, Qwest would be treated as a dominant carrier under that section for no other reason than it is providing in-region, international telecommunications services on an integrated basis. To the extent that Qwest otherwise would be treated as a dominant carrier with regard to international services, the grant of forbearance has no effect.
- 4. Discontinuance and Streamlined Transfer of Control.** The Commission grants limited forbearance from certain rules pertaining to streamlined transfers of control and the definitions, rules, and procedures that apply to the discontinuance, reduction, outage, and impairment of services. Specifically, the Commission forbears from rules 63.03 and 63.60-.90, and to the requirements relating to international services in rules 63.19, 63.21, 63.23, to the extent that, and only to the extent that, Qwest would be treated as a dominant carrier under these rules for no reason other than it is providing in-region, interstate, interLATA and international services on an integrated basis. To the extent that Qwest otherwise would be treated as a dominant carrier under these rules, that treatment shall continue. Forbearance with respect to rule 63.03 extends only to those circumstances in which Qwest seeks to assign or transfer control of assets used solely for the purpose of providing in-region, interstate, interLATA telecommunications services or to transfer control of an affiliate that does not jointly own any assets with another entity that uses such assets to provide services that are subject to dominant carrier regulation. The Commission also does not forbear from any discontinuance rules and transfer of control rules for nondominant carriers implementing sections 214(a), (c), and (d) of the Act.

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<sup>4</sup> The Commission also does not forbear from the applications of sections 63.10 and 63.18 of its rules because the provisions in these rules that deal with dominant carriers apply only to carriers classified as dominant based on their affiliations with foreign carriers. The Commission therefore does not need to forbear from these rules for Qwest to operate as it proposes to operate.

5. **Contract Filing and Reporting Forbearance.** The Commission forbears from applying the contract filing and reporting requirements of section 43.51 of the rules to Qwest to the extent that, and only to the extent that, Qwest would be treated as a dominant carrier for no other reason than Qwest is providing in-region, interstate, interLATA telecommunications services on an integrated basis. To the extent that Qwest otherwise would be treated as a dominant carrier under rule 43.51, that treatment shall continue. The Commission does not forbear from sections 43.21 and 43.43 of the rules. These rules apply because Qwest is an incumbent LEC, not because it is classified as dominant in the provision of any service.
6. **Section 272(e).** The Commission does not forbear from the requirements in section 272(e) of the Act, and notes that these requirements do not preclude Qwest from providing, subject to nondominant carrier regulation, in-region, interstate, interLATA telecommunications services on an integrated basis. We need not forbear from the other provisions of section 272 that have sunset.
7. **Accounting.** The Commission treats, and will continue to treat, the costs and revenues associated with Qwest's provision of in-region, interstate, interLATA telecommunications services as nonregulated for accounting purposes, even if they are provided on an integrated basis.

### **Safeguards**

The Commission's grant of forbearance relief is subject to the following conditions:

1. **Special Access Performance Metrics.** Qwest must comply with its commitment to implement special access metrics similar to those imposed on AT&T and Verizon under the terms of the *SBC/AT&T* and *Verizon/MCI* merger orders.<sup>5</sup> The metrics are designed to ensure that Qwest does not engage in non-price discrimination in its provision of special access service; specifically, they address order taking, provisioning, and maintenance and repair of Qwest's DS0, DS1, DS3, and OCn services. Qwest will provide the Commission with its performance measurement results on a quarterly basis, and will implement these metrics for the first full quarter following the effective date of the Order. This commitment shall terminate on the earlier of: (i) 30 months and 60 days after the beginning of the first full quarter following the effective date of the Order; or (ii) the effective date of a Commission order adopting performance metrics for interstate special access services.
2. **Imputation.** The Commission directs that Qwest impute to itself its tariffed rates for access, including access provided over joint-use facilities, where it sells comparable access to unaffiliated interexchange carriers. Qwest also will modify its Cost Allocation Manual (CAM), filed pursuant to section 64.903 of the rules, to include its imputation methodology as necessary to ensure that its imputation methodology remains consistent with the requirements of section 272(e)(3) of the Act. The Commission requires Qwest to include the imputation charges it debits to account 32.5280 in its ARMIS filings, accompanied by an explanatory footnote for each line item identifying the amount imputed. The revised CAM will be subject to public comment.
3. **Low Volume Usage Plans.** Qwest must comply with its commitment to continue offering, for at least two years after the effective date of the Order, two specified residential calling plans tailored to the needs of customers who make relatively few interstate long distance calls.<sup>6</sup> Specifically, Qwest

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<sup>5</sup> See Letter from Melissa E. Newman, Vice President, Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-333 (filed Feb. 9, 2007) (Qwest Feb. 9, 2007 *Ex Parte* Letter).

<sup>6</sup> See Letter from Melissa E. Newman, Vice President, Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-333, Attach. at 1 (filed Feb. 8, 2007) (Qwest Feb. 8, 2007 *Ex Parte* Letter).

commits to freeze the per-minute charges on these plans; to offer one of these plans with no monthly fee; and not to raise by more than \$1.00 the monthly fee on the other of these plans.

4. **Monthly Usage Information.** Qwest must comply with its commitment to continue to provide certain monthly usage information, for at least two years after the effective date of the Order, to all residential consumers of interstate, interexchange services, including those who take new and bundled offerings.<sup>7</sup> Specifically, Qwest must provide these customers with the date of the call, the time of the call, the place called, the number called, the duration of the call, and amount, if any, charged for the call.

The Commission's Order is effective on February 20, 2007.

For further information, contact William Kehoe, (202) 418-7122, [william.kehoe@fcc.gov](mailto:william.kehoe@fcc.gov), or Heather Hendrickson, (202) 418-7295, [heather.hendrickson@fcc.gov](mailto:heather.hendrickson@fcc.gov) of the Competition Policy Division, Wireline Competition Bureau. Press inquiries should be directed to Mark Wigfield, Wireline Competition Bureau, (202) 418-0253.

Action taken by the Commission on February 20, 2007: Chairman Martin and Commissioner Tate, with Commissioners Copps and Adelstein concurring, and Commissioner McDowell not participating.

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<sup>7</sup> *Id.*

**JOINT STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS AND  
COMMISSIONER JONATHAN S. ADELSTEIN,  
CONCURRING**

Re: *In the Matter of Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply After Section 272 Sunset*, WC Docket No. 05-333

In this Order, the Commission conditionally grants forbearance to allow Qwest to provide long distance services on an integrated basis and subject to non-dominant carrier regulations. We support a conditional grant of relief here because the Commission must take into account the rapidly changing long distance market and the unique competitive position of the petitioner, and because this outcome is clearly superior to allowing this petition to be granted by Commission inaction without the safeguards described below. This Commission repeatedly has recognized that Section 272 provides for structural and accounting safeguards that form the principal guarantees against improper accounting practices and cross-subsidization. We concur because we remain concerned that the Commission has not completed its industry-wide review of these issues and does not have in place a comprehensive mechanism for monitoring changes in the marketplace (*e.g.*, in the long distance, wireless, and access markets) that would enable the Commission to reliably make decisions in this area.<sup>1</sup>

Nearly four years ago the Commission issued the *Section 272 Sunset Further Notice*, which was the second notice seeking comment on changes to the long distance market and the appropriate regulatory framework for carriers like the petitioner. That proceeding – much like this forbearance petition – addresses the important issue of what rules should govern Bell Operating Companies' (BOCs) provision of long distance services after the sunset of the Section 272 separate affiliate and related requirements. While we recognize that Congress specifically contemplated that Section 272's separate affiliate and related requirements sunset after three years, we have repeatedly urged the Commission to engage in a rigorous analysis of the need for alternative safeguards on an industry-wide basis.<sup>2</sup> Yet, rather than complete this rulemaking, the Commission adopts through this Order a combination of conditions – some voluntarily offered, others not – in order to facilitate the grant of a forbearance petition, which would raise serious questions if granted as filed.<sup>3</sup>

Although we would have preferred the Commission complete its Section 272 sunset proceeding, we recognize the efforts undertaken here to conduct a rigorous market analysis to provide a picture of petitioner's unique circumstances and the competitive landscape in which it operates. Indeed, there are notable changes to the long distance market in petitioner's territory that the Commission must account

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<sup>1</sup> See *Joint Statement of Commissioner Michael J. Copps and Commissioner Jonathan S. Adelstein, Concurring, Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Further Notice of Proposed Rulemaking, WC Docket No. 02-112, FCC 03-111 (May 19, 2003) ("*Section 272 Sunset Further Notice*").

<sup>2</sup> Such an approach is also contemplated in the statute, which specifically preserves the Commission's ability to prescribe safeguards consistent with the public interest. See 47 U.S.C. § 272(f)(3).

<sup>3</sup> While these conditions help to mitigate the concerns we have regarding petitioner's market power and the impact of integrating their businesses on residential and business consumers, petitioner does not exist in a vacuum and the question of whether these conditions are appropriate on an industry-wide basis is not before us. The fact may well be that they are insufficient as applied to the situation of industry participants not present here.

for. For many, though not all, consumers, the available options are being reshaped by the rise of wireless, cable, and over-the-top VoIP services. We have also seen an increasing trend toward the availability and desirability of bundled services. We appreciate that this Order acknowledges these developments and takes steps to adjust our regulatory framework accordingly. In particular, we find persuasive the relative market shares of the petitioner in the long distance, and, in particular, the wireless market, which make potential unlawful discrimination less likely and relief more compelling in this case.

At the same time, it is not clear that all customers have benefited as dramatically from these changes, as many customers lack an effective choice of providers due to price or availability. It is imperative that the Commission remain vigilant about the continued evolution of this market. The most notable change in the long distance market, of course, is the entry of the BOCs such as the petitioner, which less than 5 years ago did not even compete in the long distance market. It therefore is important to remember that the market share levels analyzed in this Order have developed from a zero-baseline over a relatively short period of time. We have also seen increasing consolidation in this industry, including the merger of the two largest independent long distance companies into the two largest incumbent LECs. There have also been recent suggestions that the pricing for bundled services is evolving in a duopolistic manner, with higher prices for consumers.<sup>4</sup> We have repeatedly stated that competition must mean more for consumers than a choice between two providers, a cable and telephone company, and such a result would be an unfortunate back-sliding for long distance customers.

We appreciate that the Commission does adopt some notable and necessary safeguards in this Order to address some of these concerns. We were particularly pleased that the petitioner has committed to offering certain calling plans targeted for residential consumers who make relatively few long distance calls and to provide call detail information to enable consumers to make informed decisions about the most cost effective long distance plans. Regrettably, the needs of low volume consumers are often overlooked, although they have a real need for our vigilance.

This Order also makes some important findings with respect to the potential for price and performance discrimination. Notably, the Order acknowledges that incumbent providers like the petitioner retain the ability to raise their rivals' costs, and the Order maintains dominant carrier regulation for critical access services used by alternative long distance providers. The Order correctly concludes that certain requirements of Section 272 will continue to apply and adopts rules for imputation and reporting that should help the Commission and competitors evaluate whether the petitioner is engaging in price discrimination. In addition, we are pleased that petitioner has committed to comply with special access performance metrics to ensure that it does not engage in non-price discrimination in its provision of special access services.

Although these conditions may not be tailored in exactly the manner we would have crafted, their adoption is certainly preferable to the granting of the forbearance petition as filed. It is imperative for the Commission to monitor the effect of these safeguards, and we encourage the Commission to diligently verify whether its predictions about their sufficiency are accurate. In the meantime, we again encourage the Commission to return to its consideration of the Section 272 sunset rulemaking proceeding expeditiously and to evaluate the need for rigorous and more lasting conditions than the voluntary, time-limited conditions offered here.

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<sup>4</sup> See "Battle for the Bundle, 4Q06 Wireline Pricing Trends: Bells Turn the Corner on Price, Voice, & Data Bundles Up Y/Y", Bank of America (Jan. 24, 2007) (noting that "data appear to support our view that the emerging cable/telecom competitive price structure is unfolding in a duopolistic manner").